IN THE

Supreme Court of the United States

October Term, 1971

No. 70-18

JANE ROE, JOHN DOE, and MARY DOE,
Appellants,

JAMES HUBERT HALLFORD, M. D.,
Appellant-Intervenor,

v.

HENRY WADE,
Appellee.

On Appeal from the United States District Court for the Northern District of Texas

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No. 70-40

MARY DOE, *et al.*,
Appellants,

v.

ARTHUR K. BOLTON, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of Georgia

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MOTION FOR LEAVE TO FILE A BRIEF WITH BRIEF AS *AMICI CURIAE* AND APPENDIX FOR STATE COMMUNITIES AID ASSOCIATION

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MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE*

State Communities Aid Association hereby respectfully moves for leave to file a brief annexed hereto as *amicus curiae* in these cases.

State Communities Aid Association is a multifunction, statewide citizens' organization to encourage effective administration of health and welfare in New York State through fact-finding, public education and consultation to other agencies on development of state and community services. Recognizing the relationship of abortion to health, family stability, the unwanted child and the broad aspects of social justice, the State Communities Aid Association has been closely involved with the change in the law in New York and with the safe and effective implementation of the law after it was changed.

The appellants have consented to the filing of this *amici* brief. The states of Georgia and Texas have not consented.

Therefore, State Communities Aid Association respectfully requests that the Court grant this motion for leave to file the annexed brief *amicus curiae*.

Respectfully submitted,

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BRIEF FOR STATE COMMUNITIES AID ASSOCIATION AS *AMICI CURIAE*

Summary of Argument

The impact of state statutes which prohibit the performance of abortion is felt most heavily by the poor and the non-white. In those states where abortions are permitted only under very limited circumstances, it is the private patient of means and education who is able to persuade her physician that she qualifies for a legal abortion under those limited circumstances, usually on psychiatric grounds. When the woman of means cannot obtain a legal abortion in her own state, she buys a plane ticket to New York or London, and pays for an abortion there. The restrictive abortion laws can be and are evaded, but only by those with the money and education to do so.

For the poor woman, a restrictive abortion statute means either another baby she can't care for or the chance of death or maiming at the hands of a backroom abortionist whose low fee she can afford.

The unequal effect of laws prohibiting abortion violates the equal protection clause of the Fourteenth Amendment, even if the laws are not on their face discriminatory.

In addition, these restrictive abortion laws violate the rights of all women, rich or poor, to privacy in the conduct of their marriages and their lives. Such interference unconstitutionally invades a zone of privacy protected by the Ninth and Fourteenth Amendments, a right to be free of state interference basic to the concepts upon which this country was founded.

Interest of the *Amicus Curiae*

Amicus State Communities Aid Association (formerly State Charities Aid Association), 105 East 22nd Street, New York, New York, has, since its founding in 1872 sought to improve the health and welfare of the people of New York State.

It is a multifunction, statewide citizens' organization to encourage effective administration of health and welfare in New York State through fact-finding, public education, and consultation to other agencies on development of state and community services. Its staff includes specialists in public health, community organization, child welfare, legislation, public relations, and agency business management. It maintains local child welfare committees. It works with other groups in the field of social welfare, public and mental health, and community social planning.

Recognizing the relationship of abortion to health, family stability, the unwanted child and the broad aspects of social justice, the State Communities Aid Association has been closely involved with the change in the law in New York and with the safe and effective implementation of the law after it was changed. From the time that New York's amended abortion law went into effect in July 1970, through April, 1971, approximately 135,000 abortions had been performed. About one-fourth of these abortions performed on New York state residents were performed on poor women, according to New York City Health Services Administration statistics (see appendix, p. 1), the women

who traditionally have been denied access to medically safe abortions in states with restrictive abortion statutes.

As a result of the new law there has been a marked decrease in the number of botched, illegal abortions (called "incompletes") performed on women determined to terminate their pregnancy but too poor to pay a competent illegal abortionist (see appendix, pp. 1-2). The availability of abortions in New York has measurably improved the health and physical well-being of its residents, and of those women fortunate enough to be able to make their way into the state (see appendix, p. 3). The health benefits of readily available, safe abortions have been detailed by the New York City Health Services Administration in a report issued in the form of a press release on June 29, 1971, and included in the appendix, p. 4. For that reason, *amicus* joins in support of those parties urging this Court to declare unconstitutional any state statute interfering with the right of a woman to obtain a medically safe abortion.

POINT I

State statutes restricting the right to obtain an abortion place an unequal burden on the poor in violation of the equal protection clause of the Fourteenth Amendment.

The burden of state statutes which prohibit or greatly restrict the right to obtain an abortion is felt most acutely by the poor, who generally bear the burden of society's harsher laws. While legal, medically safe abortions are virtually unavailable to thousands of poor and uneducated women in states with laws prohibiting abortion, women of

greater economic means are able to evade the restrictions of such laws.

Where the law permits abortion only where necessary to preserve the mother's life or health, women with economic means obtain a proportionately greater number of abortions than the poor. And when legal abortions are not available at all the wealthy, unlike the poor, are able to pay the high cost of an illegal but medically safe abortion in their own state, or travel to other states or countries where abortions are more readily available.

A. When legal abortions are performed under a state statute prohibiting abortion under most circumstances, overwhelmingly they are performed on women who are not poor and who are not members of minority groups.

Until legislative reform in 1970, abortions were prohibited in the state of New York unless necessary to preserve the life of the mother. Studies made in New York during the years before abortion reform reflect the fact that legal abortions were primarily available to the white and the middle-class.[1]

1. "Therapeutic Abortions in New York City," a report prepared by Dr. Carl Erhardt, Director of Planning for Health Intelligence; Mrs. Frieda G. Nelson, Principal Statistician, at the New York City Department of Health; and Dr. Christopher Tietze, Associate Director, Bio-Medical Division of the Population Council, compiling and analyzing data on therapeutic abortions performed in New York from 1943 to 1967. The study shows that eighty per cent of all therapeutic abortions performed in New York City were performed on white women. The study also reports that in 1965-67, the ratio of 4.2 abortions per 1,000 live births for white women was more than twice the ratio of 1.8 per 1,000 for non-white women, which, in turn, was twice the ratio of 0.9 per 1,000 for Puerto Rican women.

The report also revealed that before the restrictive abortion law was amended most of the women obtaining abortions were of sufficient

There are many reasons why the few legal abortions performed in states with restrictive statutes are performed on white, middle-class women, rather than on the poor and the non-white. One reason has been advanced by a physician who has studied the problem:

> "The private patients of the voluntary hospitals have over three times as many abortions as the service patients in the same type institution and more than 20 times as many abortions as patients in municipal hospitals. * * * The infrequency of abortion in municipal hospitals * * * is largely due to the fact that physicians for patients in municipal hospitals still conservatively stick to the old organic disease triad [as the only justification for therapeutic abortion] * * * while physicians for private patients, frequently the very same physicians, alter their vision to be in clear focus with the social and philosophical changes in medicine."[2]

Those women of means who have a long-standing relationship with a private physician of some standing in his profession are more likely to be able to convince the physician to urge a hospital abortion board to broadly interpret a state statute which permits abortion only when necessary

means to be private patients. In 1960-62, proprietary hospitals, which have only private patients, had the highest ratio of therapeutic abortions, with 3.9 abortions per 1,000 live births, as compared to 0.1 abortions per 1,000 live births in municipal hospitals, which care only for ward patients. In 1965-67, the highest abortion per live birth ratio was on the private service in voluntary hospitals with 4.8 abortions per 1,000 live births, while municipal hospitals again had the lowest ratio, 1.3 abortions per 1,000 live births, as well as lowest absolute number of abortions performed. See also Hall, "Present Abortion Practices in Hospitals of New York State," 23 *New York Medicine* 124 (1967).

2. Guttmacher, "Abortion—Yesterday, Today and Tomorrow," in *The Case for Legalized Abortion Now,* Guttmacher, ed. (1967) at 9, 10.

to preserve the woman's life or health. Such a physician is more likely to succeed in convincing his colleagues on an abortion approval committee than is the young resident who usually treats the poor in city hospitals. In addition, affluent women are able to pay the high fees necessary, and are aware of the possibility of consulting a psychiatrist to certify that the woman is so emotionally overwrought by the pregnancy that she is a potential suicide and thus the abortion is "necessary to preserve the life of the woman."[3]

Poor women, whose reasons for not wanting to continue the pregnancy may often be far more compelling than those of a woman of means, have no long-standing relationship with a private physician. Preventive medical care is a luxury and those women usually see doctors infrequently. If they are clinic patients, they see a different doctor, often a resident or intern, on each visit. These women are usually poorly educated, are unaware that legal abortion might be available to them in a state which appears to prohibit abortion, and the clinic physician is usually too harried to discuss the question of abortion with them.

Thus, when a state prohibits the performance of abortions except in exceptional circumstances, it is chiefly the women of economic means and education who are able to establish those exceptional circumstances.

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3. "'Mental disorders' was by far the highest indication for therapeutic abortions in both 1960-62 and 1965-67. * * * It was the highest among patients on private service in voluntary hospitals (3.22 per 1,000 live births) and lowest in municipal hospitals (0.60 per 1,000)." Erhardt, Tietze and Nelson, "Therapeutic Abortions in New York City," *supra*, fn. 1, at p. 5.

B. The alternative commonly available to poor women, unlike women of means, is continuation of the pregnancy or the grave risk of endangering life and health by attempts at self-abortion or by seeking the services of a low-priced abortionist.

Many of the women who seek abortions in the states with restrictive abortion statutes do so out of a sense of desperation; this desperation is all the more extreme if the woman seeks the abortion because she already has four children for whom she can barely provide food and clothing, or if the birth of another child will mean she must give up an opportunity to be self-supporting and must become a public charge.

If the woman is non-deterable by the fact that the abortion is illegal in her state and if she can raise $500 to $1,500 without too much difficulty, she can obtain an abortion with the emotional discomfort of disobeying the law. For a bit more money, she can get an abortion and vacation combined, by travelling to another state or country. But she does not have to risk her life or health.

If the woman does not have money and does not choose to have the baby, she has the choice of attempting to abort herself by a variety of shocking and dangerous methods, or of taking her chances at the hands of an unskilled neighborhood abortionist, working with unsterilized equipment in unsanitary conditions. The result to the woman is sometimes death and, more often, infection, hemorrhaging and permanent damage.

Even though the advent of antibiotics has substantially reduced the danger of death from infection,[4] it has been estimated that mishandled criminal abortions are the principal cause of maternal deaths in the United States, killing 5,000 women a year.[5]

And for every woman who dies as a result of an incompetently performed criminal abortion, several more are permanently disabled or rendered sterile.[6]

For poor women determined to attempt to control their own lives, states with restrictive abortion statutes have erected an obstacle course through which many white middle-class women, with the assistance of their trusted family physicians, are able to thread their way. These states have disregarded the fact that women with the price of a ticket to New York or London are terminating their pregnancies at will, while, for women in the ghettoes, abortion is still a life and death issue.

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4. In New York City, according to Department of Health Statistics, only 17.4 percent of white maternal deaths over a one-year period were due to abortions, while 35.3 percent of nonwhite maternal deaths resulted from abortion and 52 percent of the maternal deaths among Puerto Ricans were caused by abortion. In absolute numbers, during the 1966-67 period, eight white women died in New York City as a result of abortions, 30 nonwhite women died, and 13 Puerto Rican women died.

5. Niswander, "Medical Abortion Practices in the United States," in *Abortion and the Law,* Smith ed. 53 (1967); Kummer, "A Psychiatrist Views Our Abortion Enigma," in *The Case for Legalized Abortion Now, supra,* fn. 2 at 124.

6. Moore, "Antiquated Abortion Laws," 20 *Wash. & Lee L. Rev.* 250, 252 (1963).

C. The operation and effect of state statutes prohibiting abortions denies equal protection of the law to low income women in violation of the equal protection clause of the Fourteenth Amendment.

The equal protection infirmity of a statute whose burden is felt more acutely by those too poor to find doctors willing to evade an unpopular law is pointed up in Mr. Justice White's concurring opinion in *Griswold* v. *Connecticut,* 381 U.S. 479, 503 (1965):

> "[T]he clear effect of these statutes, as enforced, is to deny disadvantaged citizens of Connecticut, those without either adequate knowledge or resources to obtain private counseling, access to medical assistance and up-to-date information in respect to proper methods of birth control. * * * In my view, a statute with these effects bears a substantial burden of justification when attacked under the Fourteenth Amendment."

See also *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886); *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232 (1957); *McLaughlin* v. *Florida,* 379 U.S. 184, 192 (1964).

The fact that these statutes were not intended by the legislature to be discriminatory in operation and effect does not preclude the Court from invalidating the statutes as a denial of equal protection of the law. "Law addresses itself to actualities."[7] The actuality is that the law operates in such a way that (1) white women of means get an overwhelmingly disproportionate share of the legal hospital abortions as compared to poor, non-white women; and (2) women of means are able to obtain illegal but medically safe

7. *Griffin* v. *Illinois,* 351 U.S. 12, 23 (1956), Frankfurter, J., concurring.

abortions while poorer women are forced to choose between bearing children they do not want and cannot afford to feed, or risking death or maiming at the hands of an inexpensive abortionist. This is clearly the kind of "ruthless consequence" the Supreme Court has condemned.[8] "The State is not free to produce such a squalid discrimination."[9]

In *Harper* v. *Board of Elections,* 383 U.S. 663 (1966), the Supreme Court said, at 668:

> "Lines drawn on the basis of wealth or property, like those of race (*Korematsu* v. *United States,* 323 U.S. 214, 216 * * *) are traditionally disfavored. See *Edwards* v. *California,* 314 U.S. 160, 184-185 * * *; *Griffin* v. *Illinois,* 351 U.S. 12 * * *; *Douglas* v. *California,* 372 U.S. 353. * * *"

The fact that the statutes at issue have the effect of imposing one law for the rich and one law for the poor seems determinative in light of *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960), a case involving a racial gerrymander. There the Court said:

> "It is difficult to appreciate what stands in the way of adjudging a statute having the *inevitable effect* [emphasis added] invalid in light of the principles by which this Court must judge, and uniformly has judged, statutes that, however speciously defined, obviously discriminate against colored citizens." *id.* at 342.

This position, that the discriminatory intent of a statute need not be demonstrated if the discriminatory effect is shown, is reinforced by *Reynolds* v. *Sims,* 377 U.S. 533 (1964), a reapportionment case, where the Court stated:

> "Judicial standards under the equal protection clause are well developed and familiar and it has been open

8. *Griffin* v. *Illinois,* fn. 8, *supra.*

9. *Id.* at 24.

> to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action. * * * [T]he concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." *id.* at 557, 565.

The fact that the challenged abortion statutes operate effectively against poor women, who are least able to bear the burden of unwanted children, is evidence of the great social hypocrisy involved; these states are willing to impose the prohibition against abortions only on those too poor or uninformed to be able to buy or talk their way out of compliance, in violation of the right to equal protection of the laws under the Fourteenth Amendment to the Constitution.

POINT II

Women have a constitutional right to an abortion, guaranteed by the Ninth and Fourteenth Amendments.

The majority of the federal circuits which have recognized that the Ninth Amendment creates a constitutional right to an abortion, and that such a right is a fundamental one,[10] have based their decisions on a line of Supreme Court cases carving out an area of privacy in the realm of family affairs.

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10. *Roe* v. *Wade*, 314 F. Supp. 1217 (N.D. Texas 1970), appeal docketed, 39 U.S.L.W. 3151; *Doe* v. *Bolton*, 319 F. Supp. 1048 (N.D. Ga. 1970), appeal docketed 39 U.S.L.W. 3227; *Babbitz* v. *McCann*, 310 F. Supp. 293 (E.D. Wis. 1970); *Doe* v. *Scott*, 321 F. Supp. 1385 (N.D. Ill. 1971).

In a number of historic decisions, the Supreme Court has spoken regarding that area of privacy, and those activities which are specifically protected. In *Meyer* v. *Nebraska,* 262 U.S. 390 (1923), a statute prohibiting the teaching of German to children was declared an unconstitutional violation of a parent's right to control his child's education. The right "to marry, establish a home and bring up children" was found to be guaranteed by the Fourteenth Amendment, *id.* at 399.

The right to bring up children was recognized in *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925), where an Oregon statute prohibiting parents from sending their children to private schools was struck down as a statute which "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."[11] In *Prince* v. *Massachusetts,* 321 U.S. 158 (1944), in which a statute prohibited persons from encouraging minors to sell articles in public places, the *Meyer* and *Pierce* decisions were interpreted to "have respected the private realm of family life, which the state cannot enter.[12]

The right to privacy in the realm of family life was described in even more basic terms by Mr. Justice Douglas, writing for the court in *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942), where Oklahoma's compulsory sterilization law was declared invalid, when he called the right to have offspring "a right which is basic to the perpetuation of the race."[13] The Court continued, "Marriage and procreation

11. *Id.* at 534-535.

12. *Prince* v. *Massachusetts, supra,* 321 U.S. at 166.

13. *Id.* at 536.

are fundamental to the very existence and survival of the race."[14]

Since it is clear that there is a constitutionally protected right to have children, to control their upbringing and to govern their education, a necessary corollary to these rights is the right to determine when and whether to bear children.[15] The right to bear children necessarily implies the right not to bear children and this latter right and the right to "direct the upbringing of children" as provided for in *Pierce* v. *Society of Sisters, supra,* necessarily include the right to regulate the home environment of those children and the right to control the number of additional children to be added to the household.

This right not to bear children, as exercised by the use of contraceptives before conception has occurred, was upheld by the Supreme Court in *Griswold* v. *Connecticut, supra.* In that case, a prosecution of physicians for prescribing the use of contraceptives to married couples, Connecticut's statute prohibiting the use of contraceptives to prevent conception was declared an unconstitutional infringement of the rights surrounding the marital relationship. In discussing the constitutional support for a right to marital privacy, the Court explained:

> "We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse * * * intimate to the degree of being sacred * * * it is an association for as noble a purpose as any involved in our prior decisions."[16]

14. *Id.* at 535, 541.

15. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965).

16. *Id.* at 486.

In enumerating the specific provisions in the Bill of Rights which form the right to privacy, the Court referred to the protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."[17]

The right of the individual to be protected in the privacy of his home and his personal relationships has been bolstered in another context, by the Supreme Court's recent reversal of a Georgia conviction for possession of allegedly obscene matter, *Stanley* v. *Georgia,* 394 U.S. 557 (1969). The Court held that private possession of obscene matter could not constitutionally be made a crime. Writing for the Court, Mr. Justice Marshall said, "[F]undamental is the right to be free except in very limited circumstances, from unwanted governmental intrusions into one's privacy."[18]

To illustrate the nature of the privacy which the Court found to be constitutionally protected from interference by the state, the decision quotes Mr. Justice Brandeis, dissenting in *Olmstead* v. *United States,* 277 U.S. 438, 478 (1928), as follows:

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They know that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred,

17. *Griswold, supra,* at p. 484, quoting *Boyd* v. *United States,* 116 U.S. 616, 630 (1886).

18. *Stanley* v. *Georgia, supra,* at 574. See *Katz* v. *United States,* 389 U.S. 347, 351-352 (1967).

as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man."

Surely the right being violated by state statutes prohibiting abortion is a right of fundamental constitutional importance, an essential element of those concepts of privacy that were fundamental to the principles upon which this country was founded.

Conclusion

For the reasons stated above, the Court should conclude that state statutes which prohibit abortion deny equal protection of the laws and the right to privacy, in violation of the Ninth and Fourteenth Amendments.

Respectfully submitted,

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APPENDIX

Report from The City of New York
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125 Worth Street, New York, N. Y. 10013

Dated, 5/17/71

About 135,000 abortions in the first ten months (through end of April).

Low Income: About 30,600 of these (close to 23%) were performed in municipal hospitals and wards of voluntary hospitals—traditional sources of care for low-income women.

Data from certificates of termination-of-pregnancy indicate (through end of February) that *half the City residents who got abortions were served in municipals or voluntary wards.*

Medicaid: Of the estimated 51,000 abortions to New York State residents in New York City in the first nine months, 16,000 were Medicaid-reimbursable—or 31%.

Deaths and criminal abortions: In the first ten months, there were 15 deaths: 7 in-hospital; 8 outside of hospital (including one in a doctor's office).

Hence: 8 deaths under legal auspices in over 134,000 abortions—a rate of 6.0 per 100,000.

Incompletes: In 10 reporting municipal hospitals altogether, "incompletes" averaged 480 per month from July 1-December 31. The trend is now down:

January: 391

Report from The City of New York

February: 415

March: 396

April: 282

Incompletes continued: **Where comparative data is available for the year before the law took effect, the decline in "incompletes" is very pronounced:**

At one municipal

263 incompletes from July 1-December 31, 1969

113 incompletes for the same six months of 1970

At another municipal

285 incompletes from July 1-December 31, 1969

180 for the same six months of 1970

Early vs. late abortions:

First-trimester abortions

68.6% of total in July and August

70.8% in September and October

73.7% in November and December

77.3% in January and February

85.8% in March

Post-20 week abortions

4.4% in first six months (July-December)

3.5% in January and February

1.2% in March

Report from The City of New York

TABLE COMPILED BY HEALTH SERVICES ADMINISTRATION, CITY OF NEW YORK

For Period July 1, 1970-May 31, 1971

Place of Residence (%)

Category of Provider	N.Y.C. Residents	N.Y. State	Out of State	Residence Not Stated
Municipal	95.0	0.6	0.9	3.6
Voluntary	61.9	5.4	30.3	2.4
Proprietary	16.7	2.8	79.4	1.1
Other	8.2	3.1	86.9	1.8
TOTAL	39.2	3.3	55.5	2.0

ETHNIC GROUP TOTAL		NEW YORK CITY RESIDENTS	
White	—73.8%	White	—47.7%
Non-White	—21.9%	Non-White	—42.3%
Puerto Rican	— 4.3%	Puerto Rican	—10.0%

AGE

TOTALS:

Under 15:	0.2%	30—34:	11.1%
15—19:	23.4%	35—39:	6.7%
20—24:	37.3%	40 +:	2.7%
25—29:	18.2%	Not Stated	0.5%

Press Release from Health Services Administration, The City of New York

GORDON CHASE CITES SUCCESS OF FIRST YEAR OF NEW YORK'S NEW ABORTION LAW IN TWELVE MONTH REPORT ON 165,000 ABORTIONS

In the first year of the new abortion law, close to 165,000 abortions will have been performed in New York City, Gordon Chase, Health Services Administrator, announced today. Under the liberalized New York State abortion law which took effect on July 1, 1970, over 150,000 abortions were performed in the City by May 31, with an additional 14,000 estimated for the month of June.

"New York City has accounted for the lion's share of abortions in the State and has been a resource for women all over the country," Mr. Chase said. "Nevertheless, the catastrophe many foresaw a year ago failed to materialize: we have been able to serve our residents as well as substantial numbers of out-of-State women, and, most important, we are serving women safely."

There have been no abortion-associated deaths reported in the past four months; the last reported death occurred in February. "We have a remarkable record of safety," Chase said, "compared to that of other countries, like Great Britain, where the rate was 17 per 100,000 in the first year of its abortion law, or Scandinavia, where the rate was 40 per 100,000."

There have been seven deaths here following abortions performed in hospitals and eight following abortions outside of hospitals, including one in a doctor's office before Article 42 of the N.Y.C. Health Code was enacted. The Code virtually prohibits abortions in doctor's offices. Calculating, as other countries do, on the basis of abortions performed under legal auspices, there were 8 deaths in over

Press Release from Health Services Administration

150,000 abortions during the first eleven months, a rate of 5.3 per 100,000.

Another index of increasing safety, Chase said, is the continuing decline in the rate of reported complications from abortions. In the first six months (through December 31, 1970), the overall rate was 12.4 per 1,000 abortions; by the end of March (nine months) this rate had declined to 10.0 per 1,000; and the most recent report (through June 11, 1971— . . . is down to 8.7 per 1,000.

"The safety record is improving, probably because doctors are gaining experience with the procedure, and certainly because the proportion of first trimester abortions (those within the first twelve weeks of pregnancy) has been increasing," Chase said. "Complications are decreasing steadily in both early and later abortions, but there is no question that early abortions are much, much safer. The complication rate for late abortions is almost six times as high as the first trimester abortions.

"Our most important educational task is to get across the message that early abortions carry much less risk," Chase said, "and we have evidence that we are succeeding." Analysis of certificates of termination-of-pregnancy for ten months (through April 30, 1971) reveals that 74.7% of abortions were performed in the first trimester. Trend data show that early abortions are increasing: they were 68.6% of the total in July and August; 70.8% in September and October; 73.7% in November and December; 77.3% in January and February; and 77.2% in March and April.

Similarly, very late abortions—those done after 20 weeks—are declining. Such abortions were 4.4% of the total for the first six months (through December 31), but 3.5% in January and February, and 3.6% in March and April. They are 3.9% of the cumulative total through April.

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"We will be watching these trends closely as we go into the second round of an intensive public education campaign utilizing all the media," Chase said. "We hope to duplicate or better experience in Japan where after ten years first-trimester abortions represent 94% of all the procedures."

Chase noted that although it is too early to reach definitive conclusions, there is evidence that the abortion law may be having a favorable effect on maternal and infant mortality, and numbers of out-of-wedlock births.

"Data analysis has to be undertaken cautiously," he said, "since it must be remembered that the first three months under the new law don't really count in looking at birth data; women whose pregnancies were advanced would not have had abortion as an available option in that period. Nevertheless, we see some hopeful signs." He cited the following evidence:

—Maternal mortality, inclusive of abortion-related deaths, has been declining steadily in the City over the past five years, due in part to the increased impact of family planning services. For a six-month period from October 1, 1968 through March, 1969, the rate was 5.4 maternal deaths per 10,000 live births; during October-March 1969-1970, the rate was 5.3; during October-March 1970-1971, with the new abortion law in effect, the rate dropped sharply to 2.6, an all-time low.

—Infant mortality has also dropped to a new low of 22.0 deaths per 1,000 live births from January 1 through April 30, 1971, compared to 22.5 for the same period in 1970; 25.2 during January-April 1969; and 24.5 during January-April 1968. Access to abortion "on demand" may account for some of this result, since abortion is now available to those women who are at greatest risk of giving

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birth to infants who may die: namely, very young women, unwed mothers (who generally get poorer pre-natal care), and women who have had many previous births and pregnancies, as well as women with medical handicaps.

—Out-of-wedlock births had shown a fairly steady increase over the years but, for the first time, there may be a decline in the actual numbers of these births. From January 1, 1970 through March 31, 1970, before the law was passed, there were 7,764 out-of-wedlock births, from January 1 through March 31, 1971, after the law, there were 7,581 such births. HSA will continue to watch closely to see if these figures constitute a meaningful trend for the future.

—"Incomplete" abortions—those cases that hospitals see after an abortion has begun elsewhere—seem to be declining, a possible indication that the abortion law is reducing the incidence of criminal abortions. In ten municipal hospitals taken together, incomplete and spontaneous abortions averaged 480 per month from July 1 through December 31, 1970. In January, the average was 391; in February, 415; in March, 396; in April 342; and in May, 323. Since there is reason to believe that most of this decline is due to fewer "incompletes" rather than fewer spontaneous abortions, it would appear that criminal abortions may be on the wane.

"When we started out, the greatest fear in the community was that we would not be able to serve the poor—and it is very gratifying to note that this simply has not happened," Chase said. "According to analysis of pregnancy termination certificates for the first ten months, 34.7% of City residents were served at municipal hospitals and 16.7% were patients in ward services of voluntary hospitals—the traditional source of care for low-income women."

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Chase stressed once more that at the municipal hospitals, no woman is turned away because she is unable to pay, even if she is not eligible for Medicaid. Medicaid-reimbursable abortions constitute an estimated 31% of the procedures for City residents, based on data from the first 9 months, and a recent court decision ruled that abortion will continue to be a reimbursable medical procedure.

"By and large, the proprietary (profit-making) hospitals and the out-of-hospital abortion clinics are the facilities that tend to serve-out-of-State residents. 79.4% of the proprietary caseload through April consisted of out-of-State women, as did 86.9% of the non-hospital clinic caseload." 82.4% of out-of-State residents were served in these facilities.

Of the estimated year-end projection of over 164,000 abortions, based on weekly reports from hospitals and clinics . . . 26,000 will be at municipal hospitals, 40,000 at voluntary hospitals; 50,000 at proprietary hospitals; and 48,000 at out-of-hospital clinics.

At present, there are 18 out-of-hospital abortion clinics known to be operating in New York City. Under Article 42 of the N.Y.C. Health Code, which was adopted on October 19, 1970, abortions are restricted either to hospitals, or to clinics affiliated with and located very close to hospitals that can provide emergency services if needed, or to free-standing clinics that are equipped to handle their own emergencies and are, in effect, "mini-hospitals."

The Board of Health proposed on June 24 a new amendment to Article 42 which would require all abortion clinics to register with the Department of Health, which inspects them and assists them in complying with the medical provisions of the Code. Under this amendment, if adopted, a clinic could be shut down on 48-hour notice if it failed

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to register or if it violated the Code so as to endanger the life or health of its patients, in the judgment of the Health Department. This proposed amendment will be published in the City Record this week, with public comment requested.

"There is no question," Chase said, "that New York City has proved this year that legal abortion on demand is feasible. While there are always going to be individual problems in initiating any massive new program such as this, the essential fact is that we have been able to provide prompt, dignified, and—most important—safe care to vast numbers of women who have sought this procedure. The success of the new law is due in great measure to the splendid cooperation of all sectors of the health care system in the City, and especially to the high standards of performance of the medical profession."

Mr. Chase particularly singled out for praise the Family Planning Information Service, the free counseling and referral agency operated on behalf of the City by Planned Parenthood of New York City, Inc., and the Health Department Abortion Clearing House which serves over 40 hospitals, enabling them to refer their patients quickly to other hospitals if they cannot meet the demand at a particular moment.